

William W. Mercer
HOLLAND & HART LLP
401 North 31st Street, Suite 1500
P.O. Box 639
Billings, MT 59103-0639
Telephone: (406) 896-4607
Facsimile: (406) 252-1669
Email: wwmerc@hollandhart.com

Kristina R. Van Bockern (*Pro Hac Vice*)
HOLLAND & HART LLP
555 17th Street, Suite 3200
Denver, CO 80202
Telephone: (303) 295-8107
Facsimile: (720) 545-9952
Email: trvanbockern@hollandhart.com

Andrew C. Emrich (*Pro Hac Vice*)
HOLLAND & HART LLP
6380 South Fiddlers Green Cir., Suite 500
Greenwood Village, CO 80111
Telephone: (303) 290-1621
Facsimile: (866) 711-8046
Email: acemrich@hollandhart.com

Attorneys for Defendant-Intervenor Spring Creek Coal LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

WILDEARTH GUARDIANS, *et al.*,

Plaintiffs,

v.

DAVID BERNHARDT, in his official
capacity of Secretary of the Interior, *et
al.*,

Defendants,

and

SPRING CREEK COAL LLC,

Defendant-Intervenor.

CV 17-80-BLG-SPW-TJC

**DEFENDANT-INTERVENOR
SPRING CREEK COAL LLC'S
NOTICE OF SUPPLEMENTAL
AUTHORITY**

Pursuant to D. Mont. L.R. 7.4, Spring Creek Coal LLC (“Spring Creek”) respectfully submits this notice of supplemental authority in support of its previously submitted arguments opposing Plaintiffs’ claim that the Office of Surface Mining Reclamation and Enforcement (“OSMRE”) failed to consider the validity of the coal lease underlying the mining plan decision. *See* ECF 63 at 24-25; ECF 69 at 12.

On April 12, 2019, OSMRE issued a Decision denying Plaintiff WildEarth Guardians’ (“WildEarth”) request that OSMRE inspect and issue a cessation order to halt mining operations at the Spring Creek Mine, as well as other Montana and Wyoming mines. *See* attached Decision.¹ In that matter, WildEarth had alleged (as it does in this case) that Spring Creek’s lease MTM-94378 was signed by the wrong Bureau of Land Management (“BLM”) official. WildEarth further alleged that BLM’s mistake resulted in Spring Creek lacking a valid right of entry for its mine under the Surface Mining Control and Reclamation Act (“SMCRA”) and the Montana state permitting program. *Id.* at 2.²

In denying WildEarth’s inspection and cessation request, OSMRE found, among other things, that:

¹ Spring Creek did not receive a copy of the Decision until April 26, 2019 – when WildEarth provided Spring Creek a copy with its notice appealing the Decision to the Interior Board of Land Appeals.

² The OSMRE Decision is unpaginated; therefore, Spring Creek’s citations refer to the PDF document page numbers.

- 1) WildEarth and other members of the public had a duty to scrutinize the proposed mine permit, including the basis for right of entry, *before* the state regulatory authority (Montana Department of Environmental Quality) approved the permit (*id.* at 6);
- 2) SMCRA prohibits OSMRE and the states from adjudicating property rights claimed by the mining permit applicants (*i.e.* OSMRE and states may not second-guess BLM's leasing decisions) (*id.* at 6-7);
- 3) Neither WildEarth nor any other party ever directly challenged the BLM leases based on the alleged improper delegation of authority (*id.* at 8);
- 4) Any challenge to the Spring Creek lease was now barred by the statute of limitations in 28 U.S.C. § 2401(a) (*id.* at 8-9); and
- 5) Magistrate Cavan's February 11, 2019 Findings and Recommendations ("Findings") properly found that WildEarth's challenge to the mine plan approval based on the validity of the lease was an inappropriate collateral attack on the lease (*id.* at 9).

Plaintiffs did not object to Magistrate Cavan's Findings, which rejected Plaintiffs' lease validity claim. *See* ECF 78. Based on the attached Decision and for all the reasons set forth in Spring Creek's briefs, the Court should reject Plaintiffs' lease validity claim.

Dated this 8th day of May, 2019.

William W. Mercer
HOLLAND & HART LLP
401 North 31st Street, Suite 1500
P.O. Box 639
Billings, MT 59103-0639

/s/ Andrew C. Emrich
Andrew C. Emrich (*Pro Hac Vice*)
HOLLAND & HART LLP
6380 South Fiddlers Green Circle, Suite 500
Greenwood Village, CO 80111

Kristina R. Van Bockern (*Pro Hac Vice*)
HOLLAND & HART LLP
555 17th Street, Suite 3200
Denver, CO 80202

*Attorneys for Defendant-Intervenor
Spring Creek Coal LLC*

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2019, I electronically filed the foregoing document, Defendant-Intervenor Spring Creek Coal LLC's Notice of Supplemental Authority, with the clerk of the court for the United States District Court for the District of Montana using the CM/ECF system.

/s/ Andrew C. Emrich
Andrew C. Emrich
Attorney for Defendant-Intervenor
Spring Creek Coal LLC

12455886_2